

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

COMMENTS/REPLY SERVICE APPEAL No. 05/2023

Diary No. 6146

Dated 22/6/2022

Mr. Safdar Ali Shah

..... Appellant

-Versus-

Government of Khyber Pakhtunkhwa and others

..... Respondents

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Dated: June _____, 2023

Date of Hearing 5/7/2023
Peshawar

Deponent
Hafiz Ameer Muhammad Khan
H. [Signature]

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

SERVICE APPEAL NO. 05/2023

Mr. Safdar Ali Shah

Appellant

Versus

Government of Khyber Pakhtunkhwa
and others

Respondents


Comments on behalf of respondents No. 02, 03 and 04

Respectfully Sheweth,

Preliminary objections

1. That the appeal is time barred for more than four years and as such it is barred by law hence not maintainable.
2. That the appellant has challenged order of the honorable Peshawar High Court for which this honorable Tribunal lacks jurisdiction
3. That the appellant has got no cause of action, therefore, the instant appeal is liable to be dismissed.
4. That the appellant has got no locus standi to file this appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appeal does not meet the judicial standards and the same is barred by law.

Parawise comments are offered as follows:

1. Pertains to record hence no comments.
 2. Pertains to record hence no comments.
 3. Correct.
 4. Pertains to record.
 5. Pertains to record hence no comments.
 6. Correct to the extent that the appellant was holding the post of Chief Conservator Wildlife till 13-06-2019. It is worth to mention here that although having marked senior on the seniority list, the appellant was deferred by the Provincial Selection Board for promotion in its meeting dated 26.12.2018 due to involvement in VR case with NAB and non-availability of PER for the year 2017 (part) and his subsequent Officer was promoted against the single cadre post required to be filled through selection on merit of Chief Conservator Wildlife, Khyber Pakhtunkhwa on regular basis.
 7. Pertains to record hence no comments.
- 

- 8. Pertains to record hence no comments.
- 9. Pertains to record hence no comments.
- 10. Correct to the extent that after receiving the subject case/file in the department exoneration orders of the appellant was notified on 21.03.2019.
- 11. Pertains to record hence no comments.
- 12. Pertains to record hence no comments. However, minutes of the Provincial Selection Board (PSB) dated 26.12.2018 as well as promotion orders of Respondent No. 6 dated 17.01.2019 are attached(Annex-A & B).
- 13. Pertains to record hence no comments.
- 14. Pertains to record hence no comments. However, minutes of the Provincial Selection Board (PSB) dated 07.05.2019 as well as promotion orders of appellant dated 16.05.2019 are attached(Annex-C & D).
- 15. Pertains to record hence no comments.
- 16. Pertains to record hence no comments. However, the operative part of the Judgment of Peshawar High Court dated 26.11.2020 are attached (Annex-E) with the addition that the writ petition No. 317-P/2019 was also dismissed by the court with the advise to the appellant to seek his remedy from the competent forum i.e., Service Tribunal.
- 17. Pertains to record hence no comments. However, judgment of Supreme Court of Pakistan dated 12.04.2022 is attached(Annex-F).
- 18. Pertains to record hence no comments. However, judgment of Supreme Court of Pakistan dated 28.07.2022 is attached(Annex-G).
- 19. Incorrect, the appellant instituted COC NO. 390/2022 before Peshawar High Court for the same prayer before submission of the Service Appeal in the Service Tribunal which was dismissed on 22-03-2023 therefore, his appeal was not processed(Annex-H).
- 20. The appellant has got no cause of action to file instant appeal.

ON GROUNDS

- A. Incorrect. As replied above.
- B. Incorrect. Promotion of Respondent No. 6 to the post of Chief Conservator Wildlife BS-20 on regular basis was made on the recommendation of Provincial Selection Board being competent forum and after approval of the competent authority.
- C. Correct to the extent that the appellant was entered into VR with NAB with amount of Rs. 38,29,842/-. However, in light of directions of the Supreme Court of Pakistan in VR cases, a disciplinary action under E & D Rules, 2011 was taken against the appellant and on findings of the inquiry committee the competent authority exonerated the appellant from all the charges leveled against him vide Notification dated 21.03.2019(Annex-I)

- D. Pertains to record hence no comments. As already explained in Para-10 of the facts.
- E. As already explained above paras.
- F. Incorrect; as already explained in Para-B of the grounds.
- G. As replied above.
- H. As replied above.
- I. The respondents seek leave to raise additional grounds at the time of arguments.

Keeping in view of the above exposition, since Provincial Selection Board (PSB) is the competent forum which recommended promotion of respondent No. 06 and duly notified upon approval of the competent authority (Chief Minister), and has already got finality. Therefore, the service appeal having no merit may be dismissed.



Secretary Establishment
 Government of Khyber Pakhtunkhwa
 Peshawar
(Respondent No.04)



(Syed Nazar Hussain Shah)
 Secretary
 Government of Khyber Pakhtunkhwa
 Climate Change, Forestry, Environment
 and Wildlife Deptt:
(Respondent No.03)



Chief Secretary
 Government of Khyber Pakhtunkhwa
 Peshawar
(Respondent No. 02)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

COMPLAINT SERVICE APPEAL No. 05/2023

Mr. Safdar Ali Shah

..... Appellant

-Versus-

Government of Khyber Pakhtunkhwa others

..... Respondents

AFFIDAVIT

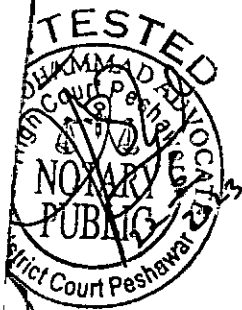
I, Hafiz Ameer Muhammad, Divisional Forest Officer Wildlife, Wildlife Department, Peshawar, do hereby solemnly and declare that the contents of the accompanying para-wise comments, submitted by them are true and correct to the best of my knowledge and belief and nothing has been withheld from this Honorable Court.

It is further, stated on oath that the appealing Respondents have neither been placed ex-parte nor their defense has been struck off.

DEPONENT



Hafiz Ameer Muhammad Khan
Divisional Forest Officer
MAI Forestry Sector Project
Peshawar



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OFFICE OF THE
CHIEF CONSERVATOR WILDLIFE
KHYBER PAKHTUNKHWA
PESHAWAR

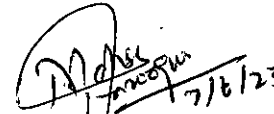
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No. 10695 /WL (Lit)

Dated 7/6/2023

AUTHORITY LETTER

Hafiz Ameer Muhammad, Divisional Wildlife Officer (BPS-18), AIP (Wildlife Component) Project with a CNIC No.37405-5121883-1 and Cell No.03335591885 is hereby authorized to attend the court on each date of hearing on behalf of the undersigned in the Service Tribunal Peshawar Bench in Service Appeal No.05/2023 titled "Safdar Ali Shah V/S Govt of KP & six (06) Others" till finalization of the case.


7/6/23
Chief Conservator Wildlife
Khyber Pakhtunkhwa
Peshawar

6

10

ESSENTIAL
COMMUNICATE



GOVERNMENT OF KHYBER PAKHTUKHWA
ESTABLISHMENT DEPARTMENT

No. SO(PSB)ED/1-7/2018/P-112
Dated Peshawar, the 02.01.2019

The Secretary to
Government of Khyber Pakhtukhwa,
Environment Department



SUBJECT: - MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD
HELD ON 26.12.2018.

PROMOTION OF CONSERVATOR BS-19 TO THE POST OF CHIEF
CONSERVATOR BS-20.

Dear Sir,

I am directed to refer to Environment Department letter No. SO(Estt)FE&WD/11-2/2K17 dated 14.12.2018 on the subject and to forward herewith an extract of Additional Item No. (04) of the minutes/recommendations of the meeting of Provincial Selection Board held on 26.12.2018 as well as copy of approved summary wherein the Chief Minister being competent authority in terms of Rules 4 (1) (a) of the Khyber Pakhtunkhwa, has approved the recommendation of the PSB for further necessary action.

Yours faithfully

SS

3/1/2019
(Abdul Hamoed)
SECTION OFFICER (PSB)

Divisional Forest Officer Wildlife
(Monitoring) MAI Forestry Sector
Project (Wildlife Component)

26.12.2018

ADDITIONAL ITEM NO (1)

SECRETARY FORESTRY, ENVIRONMENT AND WILDLIFE DEPARTMENT
(Meeting of PSB held on 26.12.2018)

SUBJECT:- PROMOTION OF CONSERVATOR WILDLIFE BS-19 TO THE POST OF CHIEF CONSERVATOR WILDLIFE BS-20.

Secretary Forestry, Environment and Wildlife apprised the Board that due to retirement, one (01) post of Chief Conservator Wildlife BS-20 is lying vacant. He further apprised the Board that the Peshawar High Court in its order dated 29.11.2018 directed to place the promotion case of Dr. Mohsin Farooq before the Board.

- 2. According to service rules the post is required to be filled as under:-
"By promotion, on the basis of selection on merit, from amongst Conservators of Wildlife with at least seventeen years accumulative service in FPS-17 and above. Seniority being considered only in the case of officers of practically the same standard on merit."
- 3. The service record of the officers included in the panel was discussed as follows:-

S#	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Safdar Ali Shah	His date of birth is 24.06.1965. He joined government service on 16.10.1993 in BS-17. He was promoted as Conservator Wildlife BS19 on 13.02.2010. He has passed the prescribed departmental examination. However, he is involved in Voluntary Return (VR) case with NAB. His PER for the year 2017 (P) is also not available.
2.	Dr. Mohsin Farooq	The Board recommended to defer his promotion. His date of birth is 13.03.1968. He joined government service on 10.03.1996 in BS-17. He was promoted as Conservator Wildlife BS19 on 07.02.2014. He has passed the prescribed departmental examination. No enquiry is pending against him. His service record upto 2017 is generally good. The Board recommended the officer for promotion to the post of Chief Conservator Wildlife BS-20 on regular basis. He will be on probation for a period of one year.

H. [Signature]
 Divisional Forest Officer Wildlife
 (Monitoring) MAI Forestry Sector
 Project (Wildlife Component)

8

12



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar, the January 17, 2019

NOTIFICATION

NO.SO(E-I)E&AD/9-112/2019.

The competent authority, on the recommendations of the Provincial Selection Board, is pleased to promote Dr. Mohsin Farpoq, Conservator Wildlife (BS-19) to the post of Chief Conservator Wildlife (BS-20) on regular basis, with immediate effect.

2. The officer on promotion shall remain on probation for a period of one year, in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 and extendable for another year with the specific orders of appointing authority within two month of the expiry of first year of probation period as specified in Rule 15(2) of rules *ibid*.

3. Posting/Transfer order of the above officer will be issued later on.

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA

Endst. No & Date even.

Copy forwarded to the:-

1. Additional Chief Secretary, P&D Department.
2. Principal Secretary to Governor, Khyber Pakhtunkhwa.
3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. Secretary to Govt of Khyber Pakhtunkhwa, Environment Department with the request to move a summary for approval of competent authority for posting/transfer of the officer afresh after his regular promotion to BS-20.
5. Accountant General, Khyber Pakhtunkhwa.
6. PS to Chief Secretary, Khyber Pakhtunkhwa.
7. PS to Secretary Establishment, E&A Department/SO (Secret)/DS(Admn)/PA to Director (Protocol) E&AD/ACO Cypher E&AD.
8. Officer concerned.
9. Controller, Government Printing Press, Peshawar.

(ISHTIAQ AHMAD) *u*
SECTION OFFICER (E-I)

Divisional Forest Officer Wildlife
(Monitoring) MAI Forestry Sector
Project (Wildlife Component)

**IMMEDIATE
CONFIDENTIAL**

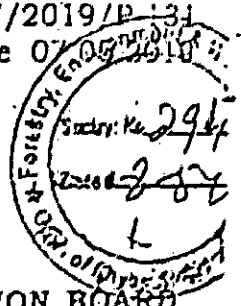
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Annex. B
"N" B



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

NO. SO(PSB)ED/1-7/2019/P-31
Dated Peshawar, the 07/05/2019



To
The Secretary to Govt. of Khyber Pakhtunkhwa,
Environment Department

**SUBJECT: - MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD
HELD ON 19.04.2019**

**PROMOTION OF CONSERVATOR WILDLIFE BS-19 TO THE POST
OF CHIEF CONSERVATOR WILDLIFE BS-20.**

Dear Sir,

I am directed to refer to the subject and forward herewith an extract of Additional item No (2) of the minutes/recommendations of the meeting of Provincial Selection Board held on 19.04.2019 as well as copy of approved summary wherein the Chief Minister being competent authority in terms of Rule 4 (1) (a) of the Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989 has approved the recommendation of the PSB for further necessary action.

Yours faithfully,

(Signature)
(Abdul Hameed)
SECTION OFFICER (PSU)

Encl: As Above

(Signature)
Section Officer (L.F.),
Environment Department
Govt of Khyber Pakhtunkhwa

(Signature)
Divisional Forest Officer Wildlife
(Monitoring) MAI Forestry Sector
Project (Wildlife Component)

(Large handwritten signature)

(61)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: APPROVAL OF RECOMMENDATIONS OF PROVINCIAL SELECTION BOARD ON PROMOTIONS.

The Provincial Selection Board met on 19.04.2019 at 0930 hours and considered promotion cases of civil servants of BS-17 and above. The PSB cleared and recommended cases of employees of Establishment, C&W, Food, Local Government, Home, PHE, Zakat, E&SE, Finance, Population Welfare, Irrigation, Minerals Development, Environment, Agriculture, Higher Education, Health & P&D Departments. Approved minutes are added as Flag "X"

2. The Chief Minister, Pakhtunkhwa being competent authority, may kindly approve promotions of the PSB as detailed in its minutes placed below.

Annex-C

[Signature]
Section Officer (A.F.),
Environment Department
Govt of Khyber Pakhtunkhwa

[Signature]
(SYED JAMAL UD DIN SHAH)
Secretary Establishment
26.4.2019

CHIEF SECRETARY,
KHYBER PAKHTUNKHWA

Endorsed

[Signature]
Divisional Forest Officer Wildlife
(Monitoring) MAI Forestry Sector
Project (Wildlife Component)

[Signature]
29/4
CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa

Diary No. 7
Dated 30.4.2019

19

ADDITIONAL ITEM NO (02)

PSB meeting held on 19.04.2019

SECRETARY, ENVIRONMENT & WILDLIFE DEPARTMENT
(Meeting of PSB held on 19.04.2019)

SUBJECT: PROMOTION OF CONSERVATOR WILDLIFE BS-19 TO THE POST OF CHIEF CONSERVATOR WILDLIFE BS-20.

meeting held on 26.12.2018 recommended chief Peshawar the PSB the post working posted not likely falling basis

Secretary Forestry, Environment and Wildlife apprised the Board that the PSB in its meeting held on 26.12.2018 recommended to defer promotion of Mr. Safdar Ali Shah to the post of Chief Conservator Wildlife BS-20 due to his involvement in a VR case. The Board recommended Mr. Mohsin Farooq appearing at Sr. No. 2 of the panel for promotion to the post of Chief Conservator Wildlife BS-20 on regular basis. Mr. Safdar Ali Shah filed a Writ Petition in Peshawar High Court which in its judgment dated 08.04.2019 directed to place his case before the PSB for consideration within the rules at their own end. He further apprised the Board that the post of Chief Conservator Wildlife BS-20 is still vacant against which Mr. Safdar Ali Shah is working in his own pay & scale. Moreover, Mr. Mohsin Farooq promoted to BS-20 has been posted against the post of Director General in the Pakistan Forest Institute, Peshawar which is likely to be filled in the near future. Hence, the post of Chief Conservator Wildlife BS-20 is still vacant, against which Mr. Safdar Ali Shah can be appointed in BS-20 on acting charge.

According to service rules the post is required to be filled as under:-

"By promotion, on the basis of selection on merit, from amongst Conservators of Wildlife with at least seventeen years accumulative service in BPS-17 and above Seniority being considered only in the case of officers of practically the same standard on merit"

3. The service record of the officers included in the panel was discussed as follows:-

S#	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Safdar Ali Shah	His date of birth is 24.06.1965. He joined government service on 16.10.1993 in BS-17. He was promoted as Conservator Wildlife BS-19 on 13.02.2010. He has passed the prescribed departmental examination. The Secretary informed the Board that he has been exonerated in the VR case. It was brought into the notice of the Board that the Peshawar High Court, Mingora Bench in VR cases in Writ Petitions No. 1145-M of 2018 & 1247-M of 2018 dated 26.03.2019 directed that the respondents shall first finalize the enquiries if any against the petitioners and thereafter reconstitute Departmental Promotion Committees by placing the names of the petitioners in accordance with their seniority list in the working paper of the officials who are to be promoted or have been promoted out of turn against the seniority order. However, the promotion orders of the petitioners so passed shall be subject to final decision of the august Supreme Court of Pakistan in Suo Motu case No 17 of 2016. No other enquiry is pending against him. He has been exonerated in the disciplinary proceedings in VR case. His PER for the year 2018(P) has not yet been countersigned. His service record upto 2018 is generally good. He has

Section Officer (L),
Environment Department
Govt of Khy. Pakist.

Divisional Forest Officer Wildlife
(Monitoring) MAI Forestry Sector
Project (Wildlife Component)

(62)

Amir H

	<p>60 marks against the required threshold of 70.</p> <p><i>PSB meeting held on 19.04.2019.</i></p> <p>The Board recommended the officer for appointment to the post of Chief Conservator Wildlife BS-20 on acting charge basis subject to final decision of the Supreme Court of Pakistan in Suo Motu case No. 17 of 2016.</p>
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Attested

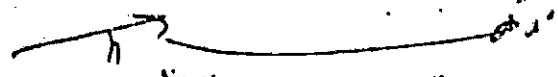
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CONFIDENTIAL



Section Officer (L.T.)
 Environment Department
 Govt of Khyber Pakhtunkhwa

[Signature]

[Signature]

Divisional Forest Officer Wildlife
 (Monitoring) BAI Forestry Sector
 Project (Wildlife Component)



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar, the 10th May, 2010

NOTIFICATION

NO.SO(E-I)E&AD/9-112/2010, On the recommendations of Provincial Selection Board, the competent authority is pleased to appoint Mr. Safdar Ali Shah, Conservator Wildlife (BS-19) to the post of Chief Conservator Wildlife (BS-20) on acting charge basis, with immediate effect, subject to final decision of the August Supreme Court of Pakistan in *Suo Motu Case No. 17/2010*.

2. Consequent upon above Mr. Safdar Ali Shah (BS-20 a.c.b.) is authorized to actualize his acting charge appointment against already occupied post of Chief Conservator Wildlife (BS-20).

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA

Endst. No. & date even.
Copy forwarded to the:-

1. Principal Secretary to Governor, Khyber Pakhtunkhwa
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary to Govt of Khyber Pakhtunkhwa, Forestry, Environment and Wildlife Department
4. Divisional Commissioner, Peshawar.
5. Accountant General, Khyber Pakhtunkhwa.
6. Director (B&A) Environment Department.
7. Managing Director, Forest Development Corporation, Peshawar.
8. Chief Conservator of Forests Malakand, Forest Region-III, Swat
9. Chief Conservator of Wildlife, Khyber Pakhtunkhwa
10. Chief Conservator of Forests Region-I Central and Southern Forest Region-I, Peshawar.
11. District Accounts Officer, Abbottabad. &
12. PS to Chief Secretary, Khyber Pakhtunkhwa.
13. PS to Secretary Establishment
14. Officer concerned.
15. Manager, Govt. Printing Press Peshawar

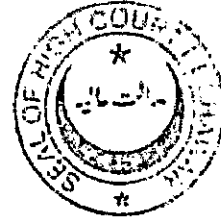
(ISHTIAQ AHMAD)
SECTION OFFICER (ESTT. I)

ZAULHAR

Forest Officer Wildlife
Forestry Sector
(Wildlife Component)

Divisional Forest Officer Wildlife
(Monitoring) MAI Forestry Sector
Project (Wildlife Component)

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT
W.P. No.4765-P/2018



Dr. Mohsin Farooq and 03 others

Vs.

**Government of Khyber Pakhtunkhwa through
its Chief Secretary Peshawar and others**

JUDGMENT

Date of hearing 26.11.2020

**M/s. Sardar Shaukat Hayat and Aman Ullah
Marwat, Advocates, for the petitioners.**

**Mr. Rab Nawaz Khan, AAG, for the official
respondents.**

**Muhammad Ijaz Khan Sabi, Advocate, for the
respondent No.4.**

**IJAZ ANWAR, J. Through this
judgment, we intend to decide the instant
writ petition and Writ Petitions, listed
below, since, same questions of law and
facts are involved in it.**

- I. W.P. No.317-P/2019 titled "Safdar
Ali Shah Vs. The Government of
Khyber Pakhtunkhwa through the
Chief Secretary, Peshawar and
others".**
- II. W.P. No.5692-P/2019 titled "Dr.
Mohsin Farooq Vs. Government of
Khyber Pakhtunkhwa through
Chief Secretary, Peshawar and
others".**
- III. W.P. No.1816-P/2020 titled "Dr.
Mohsin Farooq and others Vs.**

H. [Signature]
Divisional Forest Officer Wildlife
(Monitoring) MAI Forestry Sector
Project (Wildlife Component)

ATTESTED
EXAMINER
Peshawar High Court

Government of Khyber
Pakhtunkhwa through Chief
Secretary, Peshawar and others".

Facts of W.P No.4765-P/2018

2. In essence, petitioners are serving on different posts in the Forest, Environment and Wildlife Department-respondent and are aggrieved of the Notification dated 21.09.2017 issued by the Khyber Pakhtunkhwa Establishment Department, Peshawar, whereby, respondent No.4 (Safdar Ali Shah) was appointed as Chief Conservator Wildlife Khyber Pakhtunkhwa (BPS-20) on acting charge basis in his own pay and scale. It is further averred that respondent No.4 has entered into voluntary return with the NAB authorities in an inquiry for the allegations of accumulation of assets disproportionate to his known source of income; later, a departmental inquiry was conducted and accordingly, he was issued a Show Cause Notice and resultantly, minor penalty of withholding two increments was imposed upon him. As

H. Qureshi

Divisional Forest Officer Wildlife
(Monitoring) DEAF Forestry Sector
Project (Wildlife Component)

ATTESTED
EXAMINER
Peshawar High Court

per the decision of the Hon'ble Supreme Court of Pakistan rendered in Suo Moto bearing No.17/2016, respondent No.4 was not eligible to be promoted to the questioned post and has, thus, deprived the petitioners and others of their promotions.

Facts of W.P No.317-P/2019

3. In essence, petitioner who was appointed as Chief Conservator Wildlife (BPS-20) on acting charge basis in his own pay and scale, is aggrieved that despite standing at S.No.1 of the final seniority list, his case for promotion to the post of Chief Conservator Wildlife (BPS-20) was deferred, while respondent No.5, who was junior than him, was promoted to the questioned post vide Notification dated 17.01.2019.

Facts of W.P No.5692-P/2019

4. In essence, petitioner is aggrieved of Notification dated 16.05.2019, whereby, respondent No.6 was appointed as Chief Conservator



ATTESTED
EXAMINER
Peshawar High Court

Wildlife (BPS-20) on acting charge basis with immediate effect subject to the decision of the Hon'ble Supreme Court of Pakistan in Suo Moto case No.17/2016; while petitioner has already been promoted to the questioned post; as such, same be declared illegal, without lawful authority and jurisdiction.

Facts of W.P No.1816-P/2020

5. In essence, petitioners are aggrieved of Notification dated 21.03.2019, whereby, respondent No.5 was exonerated from the charges of corruption and corrupt practices and on the basis of which, he was promoted as Chief Conservator Wildlife (BPS-20) on acting charge basis in his own pay and scale vide Notification dated 16.05.2019; as such, the aforesaid Notification dated 21.03.2019 be considered as illegal, without lawful authority and jurisdiction and is liable to be cancelled.

6. Keeping in view the averments made in the instant and connected writ

ATTESTED
EXAMINER
Peshawar High Court

Page 5 of 13

petitions, comments were called from the respondents, who furnished the same accordingly. They, in their comments, strongly opposed the issuance of desired writ, as prayed for by the petitioners.

7. Arguments heard and record perused.

8. Almost in all these petitions, the main controversy is about the posting of respondent No.4 as Chief Conservator Wildlife (BPS-20) on acting charge basis in his own pay and scale vide Notification dated 21.09.2017.

9. W.P. No.4765-P/2018 is in the nature of quo-warranto with an additional prayer for promotion of the petitioner to the post of Chief Conservator Wildlife (BPS-20). Prayer No.III regarding the promotion of the petitioner has become infructuous, as the petitioner has already been promoted to the post of Chief Conservator Wildlife (BPS-20) vide Notification dated 17.01.2019.

ATTESTED
EXAMINER
Peshawar High Court


Divisional Forest Officer Wildlife
(Monitoring) MAI Forestry Sector
Project (Wildlife Component)

dated 21.09.2017. His posting is however disputed on the ground that he has entered into voluntary return with the NAB authorities and thus, as per the judgment of the Hon'ble Supreme Court of Pakistan reported as 2016 SCMR 2031, he cannot be posted on the questioned post. During the pendency of writ petition, petitioner was duly considered by the Provincial Selection Board (PSB) and while recommending him for promotion to the post of Chief Conservator Wildlife (BPS-20) on regular basis, case of the respondent No.4 was deferred in view of the fact that he is involved in voluntary return with the NAB authorities and his ACR/PER for the year, 2017 is also not available. Similarly, vide Notification dated 08.08.2019, respondent No.4 has been transferred and posted as Additional Director General (Education), Pakistan Forest Institute, Peshawar.





Divisional Forest Officer Wildlife
(Monitoring) MAI Forestry Sector
Project (Wildlife Component)

ATTESTED
EXAMINER
Peshawar High Court


12. In view of these developments, the controversy between the parties has now been narrowed down only to certain specific issues.

13. In W.P. No.1816-P/2020, petitioner is aggrieved of the exoneration of respondent No.5 from the departmental proceedings and his appointment as Chief Conservator Wildlife on acting charge basis in his own pay and scale vide Notification dated 16.05.2019. As stated above, when the said respondent No.5 has already been posted out vide Notification dated 08.08.2019, prayer of the petitioners in this petition to that extent has become infructuous. However, with regard to his challenge to the exoneration of the said respondent, we are of the view that on any such exoneration, no terms and conditions of the petitioners have affected nor in any manner, he can be considered as aggrieved person within the meaning of Article 199 of the Constitution.


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Besides, we have noted that a regular inquiry was conducted against the aforesaid officer/respondent and whether the charges/allegations, leveled against him, stood proved or otherwise, require detailed scrutiny of record and resolution of factual controversy, which is outside the domain of this Court. The record further transpires that the matter of voluntary return of the respondent is still subjudice before the Hon'ble Supreme Court of Pakistan in Suo Moto No.17/2016; as such, this writ petition is misconceived. Even otherwise, this Court is not supposed to sit as Appellate Authority over the decisions of the Departmental Authorities when law has provided a forum to the aggrieved persons i.e. Service Tribunal. Moreover, the aggrieved person is the one who is awarded any punishment within the meaning of Efficiency & Discipline Rules but surely not the civil servants, who are neither associated with such

14. 
 Divisional Forest Officer Wildlife
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inquiry nor punished, thus, exoneration of the respondent No.5 would, in no manner, affect their terms and conditions of service; thus, in view of the above, we are of the view that this writ petition to the extent of first part has become infructuous, while rest is not maintainable.

14. Facts of W.P. No.5692-P/2019 are also beyond the scope of this Court when the prayer is for the proceedings against the respondent No.2, the then Secretary, who has allegedly misled the Provincial Selection Board (PSB). In the instant case, when the respondent No.6 has already been deffered on account of entering into voluntary return and missing some ACRs, how can it be said that the PSB is not properly appraised. Similarly, how can the petitioner justify filing of writ petition on such pretext. So far as the other prayer regarding the setting-aside of Notification dated 16.05.2019 is concerned, this Court has

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Peshawar High Court

already discussed this issue in W.P. No.1816-P/2020, because, the said Notification was superseded by Notification dated 08.08.2019 when respondent No.6 was posted as Additional Director General (Education), Pakistan Forest Institute, Peshawar.

15. Apart from the above, petitioner has already been considered and recommended by the Provincial Selection Board (PSB) and is promoted to the post of Chief Conservator Wildlife (BPS-20) on regular basis vide Notification 18.02.2019, thus he has no locus standi left to further proceed with this petition. In view of the above developments and the above discussion about non-maintainability of this petition, we hold that it has partially become infructuous and the rest as non-maintainable.

16. W.P. No.317-P/2019 pertains to recommendation of the PSB, whereby, the respondent No.5 was promoted to the post of Chief Conservator Wildlife (BPS-



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Provincial Forest Officer Wildlife
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20) on regular basis, while petitioner was deferred.

17. Promotion, being purely a term and condition of service, its grant or denial, can only be called in question by following the procedure as provided under the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. The jurisdiction of this Court is expressly barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973; thus, in view of the judgments reported as "2007 SCMR 57" and "2015 SCMR 456", such matters can only be dealt with by the Khyber Pakhtunkhwa Service Tribunal, constituted under the law.

18. In the matter of promotion whether petitioner has submitted any departmental representation before the authority or otherwise, albeit, since this Court has got no jurisdiction, as such, we dismiss this petition; however, allow the


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petitioner to seek his remedy from the proper forum in accordance with law.

19. The only issue left with this Court is regarding filling of the post of Chief Conservator Wildlife (BPS-20). In this regard, different orders were produced before the Court, which clearly suggest that the post in question is being filled throughout on stop gap arrangements; as such, we direct the respondent No.1 to fill the post of Chief Conservator Wildlife (BPS-20) strictly in accordance with law and rules providing criteria for the questioned post.

20. With these directions, this case is disposed of with no order as to costs.

Announced
Dt:26.11.2020

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Mohsin Farooq

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(Monitoring) (RAI Forestry Sector
Project (Wildlife Component)

W.P. 31
Dismiss

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No. 317-P/2019

Sardar Ali Shah.

Vs.

Government of Khyber Pakhtunkhwa through
its Chief Secretary Peshawar and others

JUDGMENT

Date of hearing 26.11.2020.

Muhammad Ijaz Khan Sabl, Advocate, for the
petitioner.

Mr. Rab Nawaz Khan, A.G. for the official
respondents.

Mrs. Sardar. Shaukat Hayat and Aman Ullah
Marwat, Advocates, for the respondent No.5.



IJAZ ANWAR, J. Vide our detailed
judgment of even date recorded in Writ
Petition No.4765-P/2018, titled, "Dr.
Mahsin Farooq and others Vs.
Government of Khyber Pakhtunkhwa
through its Chief Secretary, Peshawar
and others", this writ petition stands
dismissed for the reasons recorded
therein.

Announced
DI:26.11.2020

JUDGE

JUDGE

H. Q.
Divisional Forest Officer Wildlife
(Monitoring) FAO Forestry Sector
Project (Wildlife Component)

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H. Q.
Divisional Forest Officer Wildlife
(Monitoring) FAO Forestry Sector
Project (Wildlife Component)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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PRESENT:
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE JAMAL KHAN MANDOKHAIL

CIVIL PETITION NOS.3656 OF 2020 & 177-P OF 2021 & C.M.A.NO.306-P OF 2021

(On appeal against the judgment dated 26.11.2020 passed by the Peshawar High Court, Peshawar in W.P.No.4765-P of 2018)

Dr. Mohsin Farooq & others (C.P.3656/20)
Government of KP thr. its Chief Secretary, Civil Secretariat, Peshawar & others (C.P.177-P & CMA.306-P/21) ... Petitioners/Applicants

VERSUS

Government of KP thr. its Chief Secretary, Civil Secretariat, Peshawar & others (C.P.3656/20)
Dr. Mohsin Farooq & others (C.P.177-P & CMA.306-P/21) ... Respondent(s)

- For the Petitioner(s) (C.P.3656/20) : Mrs. Shireen Inran, ASC
- For the Petitioner(s) (C.P.177-P/21) : Mr. Zahid Yousaf Qureshi, Addl. A.G., KP
- For the Respondent(s) : Mr. Muhammad Asif Yousafzai, ASC
(respondent No.4 in C.P.3656/20 & respondent No.3 in C.P.177-P/21)
- Date of Hearing : 12.04.2022

ORDER

SAJJAD ALI SHAH, J. The judgment of the learned Peshawar High Court, Peshawar dated 26.11.2020 in Writ Petition Nos.4765-P of 2018, 317-P of 2019, 5692-P of 2019 & 1816-P of 2020 has been impugned by the petitioner Dr. Mohsin Farooq as well as Government of Khyber Pakhtunkhwa on a limited issue. The grievance of the petitioner and the Government is to the extent that the petitioner

Senior Counsel Appellate
Supreme Court of Pakistan
Islamabad

Divisional Forest Officer Wildlife
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Project (Wildlife Component)

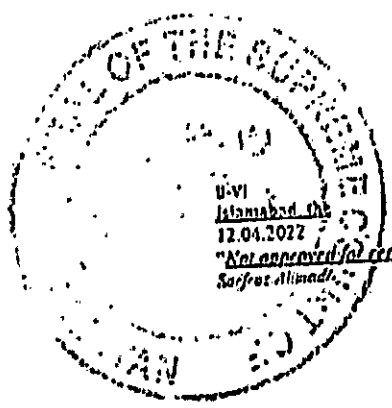
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wms promoted to BPS-20 and has been posted as Chief Conservator Wildlife, Khyber Pakhtunkhwa vide notification dated 17.01.2019 as have been recorded in para.9 of the impugned judgment and to the contrary in para.19 the learned Peshawar High Court directed to fill the post of Chief Conservator (BPS-20) strictly in accordance with law and rules providing criteria for the questioned post. Learned counsel for the petitioner as well as learned Additional Advocate General submit that the post has been filled by promotion, therefore, the direction to the extent of petitioner are redundant, However, it is submitted that the Government of Khyber Pakhtunkhwa has been and would appoint the Chief Conservator strictly in accordance with law. In view of the above statement and after attempting to reconcile both referred paras, we are also of the view that the observation in the concluding para refer to future appointments/promotions. In the circumstances, the disposal of these petitions is sought in above terms. Order accordingly.

Sd/-J
Sd/-J

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Senior Counsel Associate
Supreme Court of Pakistan
Islamabad



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Divisional Forest Officer Wildlife
(Monitoring) (MA) Forestry Sector
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Annex

IN THE SUPREME COURT OF PAKISTAN
(General Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUHAMMAD ALI NAZKI

C.P.J. 188/2022 IN C.P. 6850/2020 AND
C.P.J. 189/2022 IN C.P. 1771/2021
Petition for a writ of mandamus of this Court dated
12.07.2022

Sajjad Ali Shah

Petitioner

VERSUS

Dr. Mohsin Farooq and others
The Government of Khyber Pakhtunkhwa through
its Chief Secretary, Peshawar and others

In C.P. 188/22

In C.P. 189/22

Respondents

For the Petitioner:

Mr. Muhammad Anif Yousafzai, ASC
Mr. Muhammad Shirif Junjua, AOR

For the Respondents:

N.R.

Date of Hearing:

28.07.2022

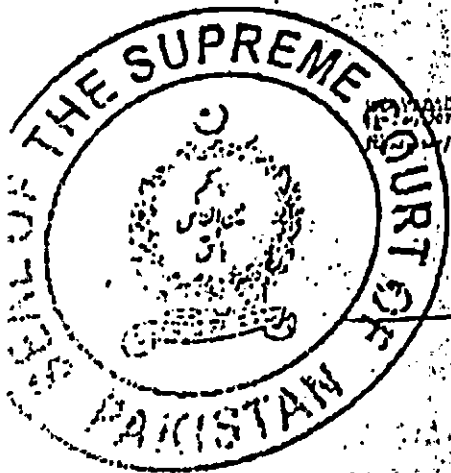
ORDER

SAJJAD ALI SHAH, J. — Learned counsel for the review petitioner states that the order impugned might affect his right to approach the Tribunal for redressal of his grievance in respect of his promotion. Having gone through the order under review, we find that the order sought to be reviewed does not determine the right or eligibility of any of the candidates appointed or to be appointed to the post in question. With this observation, these review petitions are dismissed as not pressed.

Sd/-
Sd/-

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Senior Court Associate
Supreme Court of Pakistan
Islamabad



GR No: 13935/2022 Civil/Criminal
Date of Presentation: 28-7-2022
No of Words: 300
No of Pages: 3
Requestion Fee: 500
Copy Fee: 100
Court Fee: 600
Date of Completion: 1/8/22
Date of Deposit: 28/7/22

CM1864-2022 IN WP4765-2018 MOHSIN FAROOQ VS GOVT PCS32 USB

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

COC No.390-P/2022 in COC No.52-P/2022 in W.P.
No.4765-P/2022 & W.P. No.317-P/2019

Sardar Ali Shah
Vs.

Dr. Shahzad Khan Br 2008, Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar and others



Date of hearing 22.03.2023 :
Petitioner(s) by: M/S. Muhammad Asghar Khan Kundl
and Adnan Aman, Advocates.
Respondent(s) by: Syed Sikandar Hayat Shah, AAG &
Amanullah Marwat, Advocate.

JUDGMENT

HAZ ANWAR, J. This COC petition is filed for initiation
of Contempt of Court proceedings against the responde
not complying with/implementing the consolidar
26.11.2020 passed by this Court in Writ Peti
P/2018, disposing of the same, while the Writ Petition
P/2019 of the petitioner was dismissed and also the judgment
of the apex Court dated 28.07.2022 passed in C.R.P No.188 &
189 of 2022, whereby, the apex Court modified its earlier
order dated 12.04.2022 passed in C.P. No.3656 of 2020 and
177-P of 2021.

Annex-G


- 2. Arguments heard and record perused.
- 3. Perusal of the record reveals that initially, the writ petition filed by the petitioner was decided through a


M. Qureshi
Divisional Forest Officer Wildlife
(Monitoring) MAI Forestry Sector
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consolidated judgment passed in Writ Petition bearing No.4765-P/2018 vide judgment dated 26.11.2020. The case of the petitioner i.e. W.P. No.317-P/2019 was, however, dismissed on the ground that he has to question the promotion order dated 17.01.2019 before the appropriate Service Tribunal. The judgment of this Court was questioned before the apex Court which was, however, disposed of vide order dated 12.04.2022 maintaining the order of this Court. The present petitioner, thereafter, filed a Review Petition bearing C.R.P. No.188/2022 in C.P. No.3656/2020 and C.R.P. No.189/2022 in C.P. No.177-P/2021 before the apex Court which were also dismissed vide order dated 28.07.2022 on the statement of the learned counsel for the present petitioner as according to him, the impugned order might affect his right to approach the Service Tribunal for redressal of his grievance in respect of his promotion. Similarly, the apex Court observed that the order of the High Court and as well of the apex Court, in no manner, have determined the right or eligibility of any of the candidates appointed or to be appointed to the post in question.

4. During the course of arguments, copies of Service Appeal filed by the present petitioner questioning the minutes of the Provincial Selection Board (PSB) dated 26.12.2018 and the promotion order dated 17.01.2019 were produced. We when confronted learned counsel for the petitioner, he was having no satisfactory answer for the same.

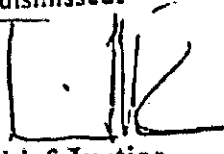

 Divisional Forest Officer Wildlife
 (Monitoring) MAI Forestry Sector
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ATTESTED
EXAMINER
 Peshawar High Court

5. We wonder that how and in what manner the order of this Court has been violated, because, we have, in our judgment, specifically declined the 'prayed relief' to the petitioner on the ground that his remedy lay before the Khyber Pakhtunkhwa Service Tribunal and the order of this Court has not been disturbed, in any manner, by the apex Court while the direction of the apex Court regarding the filing of the post in future is concerned, it will also be of no help to the petitioner at present, because, the ground situation is that the post has since been filled and the order has been questioned by the petitioner before the Khyber Pakhtunkhwa Service Tribunal.

6. For the reasons stated above, we find that this COC petition is misconceived. It is accordingly dismissed.

Announced
Dt: 22.03.2023


Chief Justice


Judge

THE HON'BLE JUSTICE QURAN ULLAH, JUDGE IN CHARGE, JUDGE IN CHARGE, JUDGE IN CHARGE, JUDGE IN CHARGE, JUDGE IN CHARGE

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 Issued by the Registrar
 High Court of Khyber Pakhtunkhwa
 Peshawar
 Under Article 87 of the
 Constitution of Pakistan
 28 MAR 2023

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 Date of Presentation of Application... 23.3.23
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 Copying fee...
 Total... 44
 Date of Preparation of Copy... 28.3.23
 Date of Delivery of Copy... 28.3.23

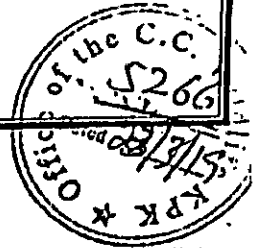
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 (Monitoring) MAI Forestry Sector
 Project (Wildlife Component)

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT**

Dated Peshawar, 21st March, 2019



NOTIFICATION

No.SO(Estt)FE&WD/II-2/2k15:- WHEREAS, Mr. Safdar All Shah, Conservator Wildlife (BS-19) was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges as mentioned in the Charge Sheet and Statement of Allegations, served upon the said officer on 11.4.2018;

2. **AND WHEREAS**, the Enquiry Committee, comprising Syed Zafar All Shah (PAS BS-20), Secretary, Population Welfare Department (as convener) and Dr. Muhammad Bashir Khan, Director General (BS-20) Environmental Protection Agency, Khyber Pakhtunkhwa (as member) was constituted to conduct de novo Inquiry against the said accused officer with reference to the allegations levelled against him in the Charge Sheet and Statement of Allegations;

3. **AND WHEREAS**, the Enquiry Committee, after having examined the charges, evidence on record and explanation of the accused officer, submitted its report, wherein the charges against the officer have not been established;

4. **NOW, THEREFORE**, the Competent Authority, after having considered the charges, evidence on record, findings of the Enquiry Committee, the explanation of the accused officer and exercising his powers under Rule-14(3) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has been pleased to "EXONERATE" Mr. Safdar All Shah, Conservator Wildlife (BS-19) from the charges levelled against him in the Statement of Allegation.

Sd/-

**CHIEF MINISTER
KHYBER PAKHTUNKHWA**

Endst: No. SO(Estt)FEPWD/ II-2/2k15 2194-31 / Dated Pesh: 21st March, 2019.

Copy is forwarded to:-

- 1) Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 2) PSO to Chief Secretary, Khyber Pakhtunkhwa.
- 3) Chief Conservator Wildlife, Khyber Pakhtunkhwa.
- 4) Officer concerned.
- 5) PS to Secretary Forestry, Environment & Wildlife Department.
- 6) Personal file of the officer.
- 7) Master file.
- 8) Office order file.

If agreed copy may be

(Signature)
(Hafiz Abdul Jalil)
SECTION OFFICER (ESTT)